UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,348	09/28/2006	Richard Van Der Ark	207,513	8777

7590 10/26/2010

Jay S.Cinamon
abelman, Frayne & Schwab
666 Third Avenue, 10 th Floor
New York, NY 10017

EXAMINER	
GWARTNEY, ELIZABETH A	
ART UNIT	PAPER NUMBER
1781	
MAIL DATE	DELIVERY MODE
10/26/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/573,348	VAN DER ARK ET AL.	
	Examiner	Art Unit	
	ELIZABETH GWARTNEY	1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 August 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *75-78,82-97 and 109-119* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *75-78,82-97 and 109-119* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The Amendment filed August 10, 2010 has been entered. Claims 55-74 and 79-81 have been cancelled. Claims 75-78, 82-97 and 109-119 are pending.

2. The previous 112 2nd Paragraph rejections have been withdrawn in light of applicant's amendments made August 10, 2010.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 82-86 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regards to claims 82-86, the recitation "[m]ethod according to claim 81" renders the claims indefinite because claim 81 has been cancelled. For the purpose of this office action, claims 82-85 will be examined as being dependent from claim 75.

With regards to claim 84, the recitation "wherein the pyrazine derivative contains at least" renders the claim indefinite because it is not clear what the pyrazine derivate contains "at least" of.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 75, 77, 82-83, 85-92 and 109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bastin et al. (US 2002/0119939).

Regarding claims 75, 77, 82-83, 85-86, 91-92 and 109. Bastin et al. disclose a method of making an aqueous oral solution by adding 1 to 150 mg/ml or about 0.1% to 15% by weight 2,5-deoxyfructosazine to demineralized water (Abstract, [0002], [0003], [0011], *see* wherein 10 ml of solution contains 100 mg deoxyfructosazine ([0022], [0032] and Claim 4). Bastin et al. also

disclose wherein the aqueous oral solution comprises flavoring and sweetener (*see* embodiment illustrative of the invention-[0022]-[0032]).

Note, given Bastin et al. disclose making an aqueous composition for oral administration, i.e. consumption, by adding about 0.1% to about 15% by weight 2,5-deoxyfructosazine to demineralized water, the composition of Bastin et al. is considered a beverage.

Regarding claims 87-90, Bastin et al. disclose all of the claim limitations as set forth above. Given Bastin et al. disclose a method of making a beverage composition identical to that presently claimed, i.e. adding 1% by weight 2,5-deoxyfructosazine to an aqueous solution of demineralized water, flavoring and sweetener, it is clear that the composition would intrinsically exhibit an A_{280} that exceeds 0.05 and an absorption ratio, $A_{280/560}$, of at least 250.

Allowable Subject Matter

9. Claims 76, 78, 95-7 and 110-119 are allowable over the prior art.

10. The following is a statement of reasons for the indication of allowable subject matter:

With regards to claims 76, 95 and 110, the primary reason for allowance is the inclusion of a light stabilizing composition as presently claimed in a hop containing beverage or beer which is not found in the prior art references.

Bastin et al. (US 2002/0119939) discloses a method of making an aqueous oral solution for oral administration, i.e. beverage, by adding 1 to 150 mg/ml or about 0.1% to 15% by weight 2,5-deoxyfructosazine to a solution demineralized water, flavor and sweetener (Abstract, [0002], [0003], [0011], *see* wherein 10 ml of solution contains 100 mg deoxyfructosazine ([0022], [0032] and Claim 4). Bastin et al. disclose that the aqueous deoxyfructosazine solution is for

pharmaceutical use wherein 2,5-deoxyfructosazine is known for its antidiabetic properties ([0002]-[0003]).

Bastin et al. does not disclose or suggest adding 2, 5-deoxyfructosazine to a hop containing beverage or beer. While Bastin et al. disclose adding 2, 5-deoxyfructosazine to an aqueous oral solution, i.e. beverage, Bastin et al. provides no motivation for adding an antidiabetic, including 2, 5-deoxyfructoszine to a hop containing beverage or beer

Note, claims 76 and 78 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments with respect to claim August 10, 2010 have been considered but are moot in view of the new ground(s) of rejection.

Terminal Disclaimer

12. The terminal disclaimer filed on August 10, 2010 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on ***US Application 10/573,349*** has been reviewed and is accepted. The terminal disclaimer has been recorded.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH GWARTNEY whose telephone number is (571)270-3874. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./
Examiner, Art Unit 1781

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1781